OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 94-13 October 24, 1994

TO : All Regional Directors, Officers-in-Charge,
Resident Officers, and Washington Division Heads

FROM : Fred Feinstein
General Counsel

SUBJECT: General Counsel Six-Month Report

I am pleased to be able to provide you with a report of the progress made in the Office of the General Counsel, the field offices and the Offices of the Board in several major areas.

The attached report covers the Agency's achievements as regards the reinvention process and new initiatives of the General Counsel and the Board, which are allowing for more expeditious and effective casehandling. In particular, the report highlights the Agency's labor-management partnership program, the 10(j) program, the expediting of representation cases, the Board's rulemaking procedures, and various operational programs and projects. As the report shows, not only have we accomplished much in these first months, but also we have set an ambitious agenda for further reinvention. Reinvention through the Labor Management Partnership is one of my highest priorities. Your cooperation in facilitating the efforts of all persons involved in that process is critical to its success.

The information in this report was provided to the Office of Management and Budget (OMB) in support of our Fiscal Year 1996 budget request and covers many of the matters which the administration is requiring to support such requests. In my view, it was critical to communicate to OMB the extraordinary effort that the Agency, at all levels, has already committed to ensuring quality of mission delivery, while doing more with less. Although government-wide policy directives prohibit making the budget submission available to you, I can tell you that our submission very clearly set forth the real impact various funding levels would have on our priorities, our mission and our ability to keep up with the caseload in the field.

I sincerely appreciate the dedicated commitment that each employee has shown in responding both to my priorities and initiatives and to those of the Board. We have achieved significant success in a relatively short time and I am confident that with your support those successes will continue. Please make this report available so that it can be reviewed by all staff members. Again, my thanks to each of you.

F. F.

Attachment

cc: NLRBU, NLRBPA

I. INTRODUCTION

The National Labor Relations Board (NLRB), created by Congress in 1935, is responsible for enforcing the nation's primary labor relations statute governing collective-bargaining relationships in the private sector, the National Labor Relations Act (NLRA). The NLRA is unique in American law because, rather than defining benefits, it establishes a process by which employees organize themselves to seek those benefits that they most desire. Some of these are inchoate, such as the right to be treated with fairness and dignity on the job, which cannot be legislated.

The basic mission of the NLRB is to serve the public interest by reducing interruptions in interstate commerce through orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relationships with each other through administration, interpretation and enforcement of the NLRA. The principal functions of the NLRB are to conduct secret ballot elections to determine whether or not employees wish to be represented by a union (representation cases), to prevent and remedy unfair labor practices by employers or unions (unfair labor practice cases), and thereby to encourage the practice and procedure of collective bargaining for those employees who desire it.

The Agency's mission is encompassed in a single program and appropriation which limits programmatic trade-offs. The NLRB does not initiate any of its caseload. Unfair labor practice (ULP) charges and petitions for representation are filed in our regional offices by employers, labor unions, and individual employees. While the Agency can neither initiate nor refuse ULP charges or representation petitions, it has actively sought to maximize the effectiveness of its available resources by resolving those matters as early in the casehandling "pipeline" as possible through screening out clearly non-meritorious ULP charges, maintaining high settlement and trial success

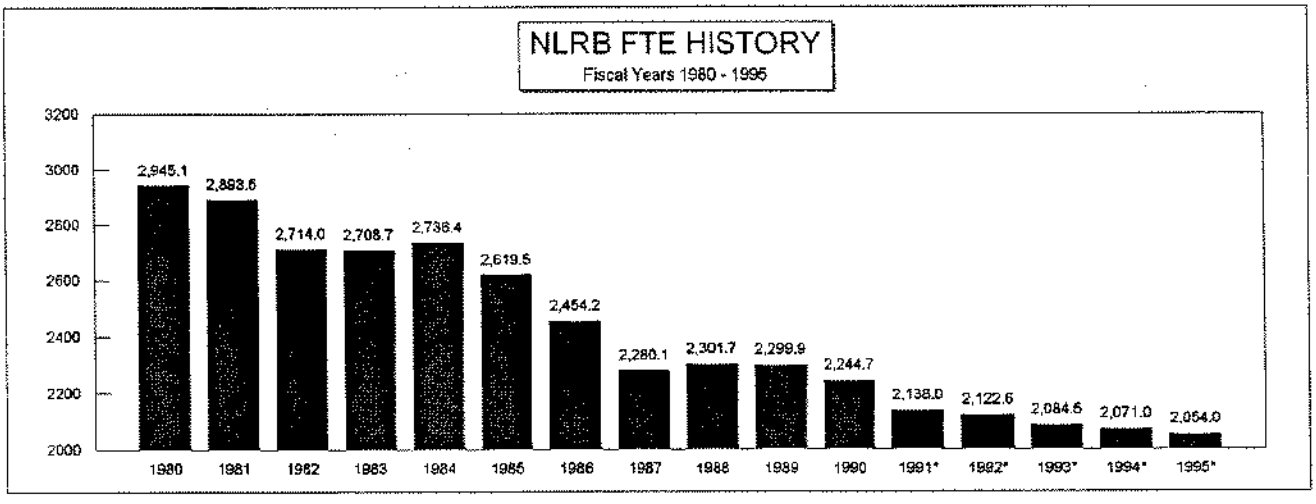
rates, automating many of its processes, and using timely and responsible financial management techniques. Consequently, over 90 percent of the Agency's cases are resolved at the regional level without headquarters involvement. While nearly all of the Agency's direct mission work is performed in regional offices, administrative functions as well as some legal functions (Federal court enforcement, appeals, legal advice, and adjudication of cases appealed to the full Board) are consolidated at Headquarters.

The NLRB is composed of two major components. The Board itself consists of five members appointed by the President to act primarily as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. The General Counsel, also appointed by the President, is independent from the Board, and has final authority to investigate unfair labor practice charges, issue complaints, and prosecute such complaints before administrative law judges and the Board. On behalf of the Board, the General Counsel prosecutes injunction proceedings, handles Courts of Appeals proceedings to enforce or review Board decisions and orders, participates in miscellaneous court litigation, and secures compliance with Board orders and court judgments. Under the supervision of the General Counsel, 33 regional directors and their staffs process representation and unfair labor practice cases from over 50 field offices across the country.

Through the enforcement of the NLRA, as amended, the NLRB investigates and remedies unfair labor practices committed by employers and unions, and safeguards employees' rights to organize and determine, through secret ballot elections, whether or not to be represented by a labor organization for purposes of collective bargaining with their employer. Since its inception 59 years ago, the Agency's efficient and effective administration of the NLRA has promptly resolved thousands of labor disputes brought to it each year. By meeting its mandated responsibilities to timely and peacefully resolve labor disputes, the NLRB contributes to the prevention of strife and

discord in industry, construction, and services for the benefit of both the public and the national economy. While the greatest impact of resolving labor disputes is in cost avoidance, probably the most visible and measurable benefits have been job reinstatements and backpay. During Fiscal Year 1992 over 3,800 employees were offered reinstatement, over 300 employees were placed on preferential hiring lists and over $50 million in backpay was distributed as a result of remedial actions taken in unfair labor practice cases.

During the past 14 years, the Agency has downsized from an FTE of 2,945 to 2,054, our FY 1994 year-end ceiling. Moreover, although the Agency's case intake declined in the early 1980's, it leveled off thereafter, and is now showing signs of increasing. The net effect of the steady FTE reduction, unaccompanied by a commensurate decline in case intake, has been that the case handling burden per FTE has risen markedly: the projected intake per FTE for 1994 is 24 percent over the figure for 1985.



While productivity increases have enabled us to keep up with a substantial portion of this burden, a backlog also has inevitably developed. The staffing reductions that we have undergone during the past 14 years have clearly had an adverse impact

on the Agency's ability to timely process the cases that are brought to us for resolution. The principal performance measurements are based upon medians, which tend to obscure the extent to which older cases have aged. Thus, while the complaint median -- the median time from filing of charge to issuance of complaint -- continued to hover at 45 days, the third and fourth quartile cases were continuing to get older. Similarly, while our Regional Directors continued to be able to issue pre-election representation case decisions in a median of 45 days, the post-median cases experienced unacceptable delays. In addition to timeliness, quality also has been adversely affected by the combination of declining staff and steady or rising intake.

The labor-relations community became acutely aware of our situation, and each side began to act accordingly. The ability of employers bent on avoiding unionization to exploit delays occasioned by insufficient enforcement resources is well-known. Indeed, Martin Levitt, in his recent memoir, *Confessions of a Union Buster* (Crown, 1993), candidly explains how an unscrupulous, well-counseled employer can stop an organizing drive in its tracks with little fear of serious consequence until well after it has sealed its success. As recently as August 24, 1994, Joe Uehlein, newly-appointed Director of Organization of the Industrial Union Department of the AFL-CIO, in an interview published in BNA's Daily Labor Report, counseled union organizers to avoid the NLRB and its election processes, because they are too time consuming and because the harm caused by undue delay often cannot be undone. By the time the election is held, Uehlein suggested, an employer can spread enough fear, doubt, and suspicion to turn the election in its favor and jeopardize the union's chances for recovery for many years to come. Employee organizations increasingly lack confidence in the ability of this Agency to carry out one of its central responsibilities, which is to promote the peaceful resolution of issues of representation.

The new Chairman, the new General Counsel, and the Board Members are firmly committed to restoring the National Labor Relations Act to its preeminence as the nation's bedrock labor law. We have spent the last 6 months assiduously reviewing ways to "reinvent" as well as reinvigorate the Agency so that it will once again provide the service that the labor-relations community and the public have depended upon since the Act was passed 59 years ago. These efforts, outlined in detail herein, are only the beginning. We intend to institutionalize "reinvention" as an ongoing process in our stewardship of the Agency.

The progress we have made to date has required careful consideration. As we show, our plans and programs have been and are being discussed with our supervisors and managers, as well as our employees and their union representatives, and have been reviewed by our Partnership Council. They represent the beginning of a blueprint for effectuating the principles and policies of the Act as well as the National Performance Review. We expect our initiatives—which include the renewed emphasis on quality of investigations, expedition in all facets of casehandling, increased utilization of Section 10(j) injunctions, expedition and simplification of representation case procedures and a more output- and customer-oriented approach to our enforcement responsibility--all to be the impetus for greater adherence to the law and fulfillment of the statutory objectives.

The NLRB's 60th anniversary year, 1995, should be the year in which we reverse the decline in our efficiency and effectiveness, and restore the Act and compliance with it to its respected position, which will truly be cause for a celebration.

II. THE REINVENTION PROCESS

A. LABOR-MANAGEMENT ADVISORY PANEL FORMED

A National Labor Relations Board Advisory Panel has been created to advise the Board on matters of concern to the bar that practices before the Agency. The Panel is composed of fifty of America's most distinguished and qualified labor lawyers. These individuals have agreed to serve, *pro bono*, and to provide the Board with their advice on a variety of procedural issues. The panel is composed of two groups which meet separately, one consisting of union lawyers and the other of management lawyers. The panel members are representative of a wide cross-section of the labor law bar, including a significant number of women and minorities, as well as members of established legal groups, such as the Labor Law Section of The American Bar Association.

B. PRELIMINARY OPERATIONAL REVIEW

The process of charting the course for improvement and reinvention of the Agency began in February 1994, under the aegis of then acting General Counsel Daniel Silverman, even before the incumbent Chairman and General Counsel were confirmed by the Senate. Mr. Silverman invited a group of Regional Directors and regional managers and supervisors, drawn from a representative grouping of our Regional Offices, to serve on three subcommittees to consider changes in three major operational areas: (1) investigative techniques and cost savings technology; (2) performance goals and measurements; and (3) regional office managerial flexibility and discretion. Their consideration included delegation of authority, decentralization, working smarter, to do more with less, and other key streamlining ideas. The three subcommittees were chaired by senior-level executives from the Division of Operations-Management; several key members of our Washington staff joined the

deliberations to lend their expertise in specific areas of endeavor. The committee members worked intensively, and their reports, 162, 109 and 165 pages in length, which issued in March and are available to you, provided many ideas for further exploration and, in many cases, implementation. A number of these ideas have been implemented and others continue under active consideration (see below).

A fourth subcommittee on paperwork reduction considered increased delegation of responsibility to Regional Directors and casehandling coordination. To reduce expenses, this committee met by teleconference; its discussions also formed the basis for several proposals that have been implemented (see below). The reductions in paperwork, while saving money, also demonstrate our commitment to reducing red tape and greater empowerment of employees at the local level to make decisions.

C. DEVELOPMENT OF GENERAL COUNSEL PRIORITIES

Shortly after taking office in March, the new General Counsel convened the executive committee of Regional Directors—consisting of a Director from each of the five operational districts, plus a chairman, selected by their peers—to begin to consider the development of operational priorities. Certain priorities were tentatively identified by the General Counsel based on prior study of the Agency. The Regional Directors agreed that these priorities merited further exploration.

Following these preliminary discussions, a select committee, consisting of a cross section of Headquarters and field personnel, including employees designated by the labor organization representing our field employees, met in Washington for a week in early May to consider in detail the validity and feasibility of implementing the priorities. The committee, with decades of collective experience in field operations, carefully examined how, in specific terms, the priorities could be implemented. In addition, it closely analyzed the impact of implementation of the priorities on other,

traditional aspects of field casehandling. Following the meeting in Washington, the committee produced a 22-page report concluding that the priorities were valid and "doable" and setting forth the steps necessary to their implementation.

The committee's reports formed the basis for a further review of the priorities, led by the General Counsel, at the annual Regional Directors' Management Conference, held in Baltimore from June 5-10, 1994. The Regional Directors concluded that the priorities could be implemented, but that additional resources would be needed to adequately meet the operational demands of the priorities without incurring intolerable backlogs in the remainder of the field casehandling pipeline. The General Counsel and the Regional Directors also adopted a principle of giving the Directors maximum discretion to determine how best to implement the priorities in their respective Regions. This delegation of authority to the front-line field offices is consistent with the streamlining objectives of the NPR, and is an approach that the Agency is utilizing in several areas.

The priorities program next was considered by the Agency's Partnership Council, which had been formed in April. As discussed more fully below, the Council consists of representatives of Agency management and of the two labor organizations that represent Agency employees, the NLRB Union and the NLRB Professional Association. The Partnership Council similarly concluded that the priorities program had great potential for success, with the caveat that additional resources, together with greater flexibility in administration of the standing time targets for nonpriority cases, would be needed in order to avoid an intolerable piling of work on an already-stretched staff.

Although the foregoing process was time consuming, we believe it will yield a substantial payoff because the broad participation helps to assure that those who carry out the Agency's mission, the career staff, truly have a stake in the program's success.

D. THE PARTNERSHIP

In April—six weeks after the new Chairman and General Counsel assumed their duties—NLRB management and union officials, after extensive deliberations, signed a partnership agreement in order to better accomplish the mission of the Agency and effectively serve the Agency's customers while promoting and maintaining the quality of work life of Agency employees. The parties to the agreement recognized that in designing and implementing the comprehensive changes needed to reform Government, it is necessary that the culture of Federal labor-management relations change so that managers and employees' elected-union representatives work together as partners.

The Partnership Agreement provides that for the first 8 months, meetings will be held on a bi-monthly basis, for 3 days' duration. All matters that pertain to NLRB reinvention initiatives and to achieving the National Performance Review goal of making the Agency work better and at less cost are appropriate for the partnership. The partnership met in late June and late August, and the process has begun to help reduce conflict and increase labor's and management's understanding of each others' concerns.

E. THE CUSTOMER SURVEYS

An important early project of the Partnership was the Agency's series of Customer Surveys, mandated by the NPR A committee representing each segment of the Agency spent several weeks defining the scope of the survey, identifying the statistical methodology and the reports to be generated, and designing the survey

instruments. Guidance was secured from a representative of OMB to ensure that results would be statistically valid and the instruments easy to understand and complete.

The project included four separate surveys, targeting four separate "customer groups": (1) telephone callers seeking information or assistance; (2) walk-in visitors seeking information or assistance; (3) parties to representation cases; and (4) parties to unfair labor practice cases.[1]

The survey of individuals who seek information or assistance included both telephone callers and walk-in visitors who had spoken with an information officer. These individuals typically have no case pending with the Agency and their inquiry may or may not be related to matters within the jurisdiction and/or authority of the Agency. Annually, the Agency receives over 200,000 telephonic information inquiries and over 20,000 walk-in visitors seeking information or assistance.

The survey of parties to representation cases and unfair labor practice cases was a written survey of approximately 9,000 individuals, attorneys, representatives of employers and representatives of unions, who had been involved in a recently closed case. Representation cases are those cases where a union, an individual employee or an employer petition the Agency to conduct an election, clarify a bargaining unit, or amend an existing certification of exclusive collective-bargaining representative. Unfair labor practice cases are charges filed by individuals, unions or employers against

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1 While the Agency recognizes that there are other potential customer groups which could be surveyed (for example, voters in NLRB-conducted representation elections), the four identified categories were determined to be the first groups targeted for Agency-conducted customer surveys. Other customer groups could be the subject of future surveys in accordance with the National Performance Review.

unions or employers, alleging that the union or the employer committed one or more unfair labor practices under the NLRA Section 8.

The surveys will measure the level of satisfaction of our customers for the wide variety of services we provide in processing cases and in our Public Information Program. The responses to all four surveys will be entered into a database and reports will be generated. The results of the surveys will be published in the near future and will be fully considered by the Agency in analyzing ways to improve its service to the public and to confirm, modify or refine our recently-issued customer service standards.

III. THE NEW INITIATIVES

This Agency has a well-earned reputation for handling the public's cases with a combination of quality and efficiency. It is a mark of the career staff's commitment to excellence that it has readily embraced the President's call for the reinvention of the Federal Government so that it can become even more effective and more responsive to the needs of the public— to "work smarter and reduce costs."

In only 6 months, a number of reinvention initiatives have been implemented and more are well into the planning process. This could not have been accomplished without, the commitment and creativity of employees, supervisors and mangers at all levels in Washington and the field, or the cooperation of our unions through the Partnership Council. Some of the changes that have occurred in this short period build on past efforts; others are basic work-culture changes. Taken together, these initiatives clearly demonstrate that this Agency is dedicated to providing the public with service that is both more expeditious in critical areas of labor management relations and better crafted to remedy and prevent the most destructive and deleterious unfair labor practices. And, as noted above, we view this process as an ongoing one that will continue throughout our tenures.

A. THE BOARD

The "Board side" of the Agency consists of the five-member Board and their staffs, the Division of Judges, the Office of the Solicitor, the Executive Secretary, the Office of Representation Appeals, and the Division of Information.[2] The Board's principal function is to decide representation and unfair labor practice cases brought

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[2] The Office of Inspector General and the Office of Equal Employment Opportunity report to both the Board and the General Counsel.

before it. It also authorizes litigation under Section 10(j) of the Act and other litigation, upon the General Counsel's recommendation.

The Board, in cooperation with the General Counsel, is actively pursuing a number of initiatives to simplify procedures, reduce litigation, and expedite the conduct of union representation elections and the processing of unfair labor practice cases by the Board, the Administrative Law Judges, and the Regional Offices. The initiatives which have been adopted or are under consideration include: performance measures; Board rulemaking in several areas; increased use of injunctions; improved Administrative Law Judge Procedures; and increased use of mail ballots.

1. Establishment of Performance Measurements

The Board has recently announced the implementation of a performance measurement system to better ensure the timely issuance of decisions by the Agency's Administrative Law Judges. Following a period of concentrated effort between now and May, 1995 to become current in pending cases, the Administrative Law Judges will be expected to issue their decisions within 60 days of receipt of the parties' briefs in cases where the transcript is 500 pages or less. Similar time goals have been established for cases with lengthier transcripts. These time goals represent a major commitment by the Board to the reinvention process and will provide the parties to our cases prompt remedial relief necessary for stable labor relations in our country. The Board is also in the process of reexamining its own decisional process, including the development of time goals for the issuance of Board decisions following the issuance of recommended orders by the Administrative Law Judges.

2. Rulemaking to Reduce Litigation and Simplify Election Procedures

The Board is exploring several areas where Board-adopted rules could avoid or reduce costly litigation and eliminate unnecessary delays in holding representation elections.

The Board has requested public comment on possible rules on the issue of the appropriateness of requested single location bargaining units in representation cases involving initial organizing in the retail, manufacturing and trucking industries. This issue has been litigated extensively in numerous aspects for many years and may be ripe for the adoption of rules by the Board which would be designed to avoid delays caused by re-litigating previously decided issues, thus expediting the election process and reducing costs and delays for the NLRB and the parties.

Various election campaign issues such as the ground rules for communication with employees by unions and employers is a second area under consideration for Board rulemaking. Several other rule proposals for expediting the representation election process are under consideration.

In addition to considering the adoption of rules which would simplify representation election procedures, the Board is also looking for opportunities, where appropriate, in its adjudication of cases to improve representation election procedures. Two such cases involve experimentation with shortened or post-election hearings for challenges of decisions involving minor issues involved in representation elections. That is, in some cases where an eligibility issue or other matter involves only a minor issue, the Board is considering whether the Regional offices may proceed to hold the election without the delay required for a formal hearing to resolve the issue.

3. Injunctions

The Board has agreed with the General Counsel to increase the utilization of interim injunctive relief pursuant to Section 10(j) of the Act. A full description of the new emphasis on 10(j) injunctions is set forth below.

4. Administrative Law Judge Procedures

In addition to the performance measurements discussed above, the NLRB has proposed two changes in Administrative Law Judge Procedures designed to facilitate the expeditious resolution of unfair labor practice proceedings.

a. Settlement Judges

The NLRB proposes to amend its rules to give the Chief Administrative Law Judge discretion to assign a judge other than the trial judge to conduct settlement negotiations with the parties and to give the settlement judge certain powers necessary to engage effectively in those settlement efforts.

The proposal is modeled on Recommendation 88-5 of the Administrative Conference of the United States, 1 CFR 305.88-5, and an awareness of the successful implementation of similar procedures by other agencies. The proposal would supplement, not supplant, settlement techniques traditionally used by the NLRB and its judges.

The proposal permits the chief administrative law judge in Washington, or his deputies and associates in other offices, to appoint a settlement judge who shall be other than the trial judge assigned to the case, with powers to convene and preside over settlement conferences between the parties in an effort to facilitate settlements.

Decisions whether to assign a settlement judge and when to terminate such participation are left to the discretion of the assigning judge and are not appealable to the Board.

The importance of choosing wisely whether and when to assign a settlement judge can be crucial to the prospects for success in achieving a settlement. Therefore, the rules require the assigning judge to consider, among other factors, the likelihood that a settlement may occur, the good faith of any person making a request for assignment of a settlement judge, and whether the assignment is otherwise feasible. Among the factors which the assigning judge may consider would be the effect of an assignment upon agency resources, whether the assignment is being sought for, or would have the effect of, delaying the proceeding, and whether the assignment might tend to undermine other pending settlement efforts. Unlike the rules of some other agencies, these proposed regulations would not permit a party to veto the use of the procedure. However, as a practical matter, a party's opposition to the use of the procedure is a factor that the assigning judge may consider in assessing whether the appointment of a settlement judge is likely to resolve the dispute.

The preferred method of conducting settlement conferences is to have the parties or their representatives attend in person, since such conferences are most likely to prove fruitful. However, the rule does not preclude holding settlement conferences by telephone in circumstances in which personal attendance at the conference is not feasible.

Discussions between the parties and the settlement judge are to be held confidential and are not admissible in proceedings before the Board except by stipulation of the parties.

Finally, the proposed rule provides that any settlement reached under the auspices of a settlement judge is subject to approval in accordance with the agency's existing procedures for approving and reviewing the approval of settlements. These procedures are set forth in Section 101.9 of the Board's Statements of Procedure, 29 CFR 101.9.

b. Briefs, Oral Argument and Bench Decisions

As part of its ongoing review of ways in which unfair labor practice proceedings can be revamped to move the cases more expeditiously, the National Labor Relations Board proposes to give its administrative law judges the discretion, in appropriate cases, to dispense with post-hearing briefs or proposed findings and conclusions, to hear oral argument, and to issue bench decisions. These changes are proposed in the form of amendments to Section 102.35(j) (renumbered to 102.35(b)(10)), Section 102.42, and Section 102.45(a) of the Board's Rules and Regulations.

Under the proposals, an administrative law judge shall have the discretion to decide whether or not briefs are needed in any case before rendering a decision. If the judge decides that briefs are not required, the parties are to be given the opportunity to present proposed findings and conclusions, either orally or in writing, as well as oral argument. In any case in which the judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she is to notify the parties at the opening of the hearing or as soon thereafter as practicable, in order to alert the parties to the possibility that they may be called upon to present their positions orally, rather than in writing, at the close of the hearing.

The proposal also gives administrative law judges the authority to render bench decisions, delivered within 72 hours after conclusion of oral argument. These

decisions, like any other decisions, must be rendered in conformity with the provisions of the Administrative Procedure Act, 5 U.S.C. Section 557.

The NLRB is mindful that many cases are not suitable for decision from the bench. If inappropriate cases were selected for this sort of summary disposition, the resulting remands could delay the final disposition of the cases. On the other hand, if administrative judges choose the cases carefully, the benefits of expediting those cases would outweigh the delays in the few cases where the procedure is improvidently utilized.

The Board has not tried to spell out, in the proposed rules, the circumstances in which these procedures should be utilized. Rather, it anticipates that monitoring experience with the implementation of the proposal is the best way to refine the circumstances for which the procedures are best suited. Nevertheless, in order to provide some guidance in the initial application of these rule changes, the Board suggests that cases in which it may be appropriate to dispense with briefs and/or to issue bench decisions would include, for example: a case that turns on a very straightforward credibility issue; cases involving one-day hearings; cases involving a well-settled legal issue where there is no dispute as to the facts; short record single-issue cases; or cases in which a party defaults by not appearing at the hearing. In more complex cases, including cases with lengthy records, utilizing these procedures could create situations in which the Board or the reviewing courts might find it necessary to remand a case for more thoughtful consideration.

5. Mail Ballot Elections

Consideration is being given to the increased use of mail ballots for representation elections where employees are widely scattered and in other

appropriate cases in order to streamline and reduce the cost of conducting representation elections.

The NLRB conducts approximately 4,000 elections each fiscal year. Elections are conducted either manually or by mail or under some circumstances a combination of both. Of the 4,000 elections only approximately 2 percent[3] are currently conducted exclusively by mail. It has been determined that expanded use of the mail ballot procedures would incur direct savings of money but, perhaps more importantly, could incur significant savings of professional employee time (albeit at a cost of increased clerical time).

Manual elections are conducted by at least one professional employee (depending on the size of the bargaining unit and the logistics of the election more than one professional employee may be needed). The professional employee must travel to the employer's place of business, set-up a polling area, hand each eligible voter a ballot and ensure that the ballot is placed in the ballot box. It is not unusual for our elections to be hundreds of miles from the nearest Board office. Thus there are often significant travel costs involved. Over 50 percent of Board elections involve units of less than 40 employees. An election of 40 or fewer can be conducted in less than one hour. Accordingly, often times, significant professional time is spent in travel when the actual work is of relatively short duration.

In a mail ballot election there is no need for a professional employee to travel. Once the professional employee has worked out the details of the election, it is a clerical function for the most part, as opposed to a professional function. The ballots

3 In FY-1993 there were 94 mail ballot elections.

are mailed to the eligible voters and are mailed back to the Regional Office. Preparation of the mailing list, the envelopes, etc. are done by clerical support.

Analysis of the elections conducted in the last fiscal year established that the Regional Offices were not taking advantage of the mail ballot election procedures. There were two major underlying reasons for this under-utilization of the mail ballot procedure. The first is that the current election manual language discourages use, and, two, the current mail ballot system produces significant mechanical problems because it is not compatible with the Postal Service's automated mailing system. After discussion with our Regional Directors as to their views regarding the use of mail ballot elections and also fifty of the top Union/Management practitioners before the Agency and interviews with other Federal and State Government Agencies, suggested changes have been presented to the Board for review. The first recommendation is to change the current manual language, and the second deals with the methods by which we conduct our mail ballot elections. It is expected the recommendations will be acted on shortly.

B. THE GENERAL COUNSEL

1. Operational Priorities

a. Introduction

Based on the thorough consideration described above, the General Counsel, on August 3, 1994, issued a memorandum to the field setting forth three new operational priorities: the renewed commitment to quality of casehandling; the acceleration of the conduct of representation elections and post-election proceedings by Regions; and the increased utilization of Section 10(j) injunctions. A copy of the memorandum is attached as Appendix C.

The focus on achieving and enhancing the quality and excellence of our work is preeminent among the General Counsel's objectives. If this were to be the only priority, it would, in and of itself, present a significant challenge, given the current budgetary climate and the shortage of resources which has persisted for several years.

Apart from the maintenance and enhancement of quality, however, the General Counsel has pledged to work together with the Board to reduce the time it takes following the filing of a representation petition, to hold an election and subsequently resolve any further questions that arise concerning representation. We have set an immediate goal to normally conduct an election in no more than 6 weeks, with none but the most unusual of representation cases resulting in an election more than 8 weeks from the filing of a petition. We also intend to give greater priority to resolving post-election disputes in objections and challenge cases, so that the results of the decision of the electorate can be implemented as soon as possible.

The third area of priority is the identification of those cases which are potentially appropriate vehicles for Section 10(j) injunctive relief, followed by the expedited investigation and administrative determination of those cases by the Regions. (Section 10(j) of the Act authorizes the Board to petition a federal district court for an injunction temporarily restoring the status quo and forbidding the commission of further unfair labor practices, during the Board's full consideration of the merits of the case. Under current procedures, all 10(j) litigation is authorized by the Board, upon the General Counsel's recommendation.) Once a Regional determination is made that Section 10(j) injunctive relief should be sought, a recommendation will be promptly prepared and forwarded to the Division of Advice for transmittal to the General Counsel and Board for approval.

We are convinced that the effective pursuit of Section 10(j) injunctive relief maximizes the potential for the prompt resolution of ULP cases and for the swift vindication of statutory rights, the raison d'être of our existence. We have already seen that the increased filing of 10(j) has been highly successful, and our win/loss ratio, despite the substantial increase in volume cases, has remained near 90 percent.

b. Expediting Representation Cases

During Fiscal Year 1993 the Agency conducted 3,586 elections in which 201,557 employees voted in an election to determine whether a union would be selected, or allowed to continue, as the employees' exclusive collective bargaining representative. Delay in this area is more than the deferral of an election outcome. The delay reverberates throughout the workplace. It exacerbates the unresolved conflict between employees and management over a critical issue. This, in turn, adversely affects employee motivation and productivity. Delay also reinforces a combative "us against them" campaign mentality that undermines the prospects for mutual trust and cooperation necessary for successful workplace relationships. The effects of delay are frequently manifested in the filing of unfair labor practice allegations which stem from the antagonism and hostility evidenced in campaign. Finally, and most significantly, delay subverts employee confidence in the effectiveness of the law and its protections, thereby eviscerating the core promise of the Act: that employees may exercise their organizational rights free from interference.

The recently-released Fact Finding Report of the Commission on the Future Of Worker Management Relations (the Dunlop Commission) confirms these conclusions. Chapter III of the Report addresses the relationship between delay in resolving questions concerning representation, frustration of the statute, and the loss of workplace productivity. The Report states:

> Most union organizing drives in the United States today are difficult for both employees and management. Though the number of union organizing campaigns is small compared to the universe of workplaces, the perceptions generated by these conflict driven situations pervade the broader employee and management relationships. (at page 65)
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> There does not exist national data on the amount of resources spent by management and labor in fighting NLRB election campaigns, but most participants and observers assess the dollar and human cost as high in relation to the extent of such activity. Firms spend considerable internal resources and often hire management consulting firms to defeat unions in organizing campaigns at a sizable cost. Unions have increased the resources going to organizing and spend considerable money in organizing campaigns. Employees who want representation devote considerable time and effort to this activity. (at page 74)

The Report suggests that significant modification of representation procedures could improve productivity, enhance the establishment of successful labor-management relationships, and better assure the fundamental right of employees freely to decide whether to seek union representation.

Traditionally, the Agency has measured its performance in the representation area in terms of medians. Over the past 20 years the Agency has been successful in achieving a median time from filing of petition to election of 50 days. Similarly, the Agency has issued Regional Director Decisions, in the approximately 20 percent of our cases requiring a formal hearing before election, in a median time of 45 days. In these cases the election would typically be conducted within 70-75 days of the filing of the petition.

However, median-based measurement focuses only upon the midpoint of performance, and thus de-emphasizes the actual age of the 50 percent of cases that are postmedian. Our experience confirms the observation of the Dunlop Commission that the cases which at present take the most time are among the most hotly contested

and substantively difficult to resolve. As the Dunlop Commission notes, about 20 percent of our elections are conducted more than 60 days after the petition is filed. Through the considerable efforts of our Regional staff, we obtain negotiated agreements between the parties, obviating the need for hearing, in approximately 80 percent of cases. Notwithstanding this overall success rate, however, the fact that 20 percent of cases have attenuated delay undermines the credibility of the entire process. Further, it frequently leads parties to perceive a choice between a negotiated election agreement in which substantial concessions are made, or the indefinite suspension of an election until the exhaustion of the hearing and decisional process.

At present, in 35 percent of those cases where no election agreement is reached and which therefore require a hearing, we are unable to issue a Regional Director's decision in 50 days or less. The review process before the Board, which is available as a matter of right, mandates a minimum of 26 days from regional decision before an election can be conducted. Accordingly, it is frequently closer to 3 months—and sometimes much longer—before an election is conducted in cases requiring a hearing. These are frequently the most hotly contested elections, involving the greatest number of workers. Delay in these instances is particularly costly.

When we examined the last quartile of our performance in the decision writing area, we learned that the cases are not more promptly completed, often because of the length and complexity of the hearing and the unavailability of staff. Obviously, this suggests that the movement of these "oldest" cases into something approaching our current median will require a significant amount of hard work and staff effort, as these are typically the most difficult cases to resolve.

Another area of concern is the handling of post-election objections and challenges. About 10 percent of our elections result in post-election proceedings to

resolve objections to conduct affecting the results of the election or challenges to voter eligibility. Again, these cases disproportionately include the larger, more significant elections. While the Regions are often able to timely resolve these issues, a time-consuming hearing frequently is required, typically in those cases that involve issues of fact or credibility. Once again, it is here where our performance could be substantially improved. While a majority of these cases are resolved by the regions in 90 days, at present, 43 percent of these cases take more than 90 days for the Region to resolve. These cases then take years more time to resolve as they are appealed to the Board and the courts. The reasons for delay in issuance of these decisions parallel the reasons for delay of the pre-election decisions.

At the present time, a party that wants to undermine the expression of employee free choice in an election campaign can utilize Board procedures to do so. Parties intent on delay can insist on a hearing, prolong it with frivolous issues, and be assured that the more difficult it has made the resolution of issues, the greater the delay in issuing the decision, and therefore, the more the election is delayed. Through merely exercising available procedures, the party can safely assume that it will take the region a minimum of 3 months and possibly 6 months to resolve R-case issues. If the Board reviews the matter, the case can take substantially longer before the question of representation is resolved.

To address these concerns, the General Counsel has implemented several operational modifications, which are set out in the August 3 memorandum. These changes include:

- The holding of all agreed-upon elections typically within 6-7 weeks of the filing of a petition, rather than in a median time of 50 days.

- In cases where hearing is warranted, the holding of a prompt hearing, typically within 14-17 days from the filing of a petition, and the prompt development of a complete record to permit the timely resolution of the issues.

- In cases where a pre-election hearing is held, the issuance of a Regional Director's decision, in all but the most exceptional of cases, within 45 days from filing of the petition, rather than a median time of 45 days.

- Ultimately, the holding of all elections—even those where a hearing is held—within 8 weeks of the filing of the petition. (This step will require the Board to amend its rules to permit more rapid processing of hearing cases.)

- For those cases involving post-election issues, quick identification of those issues requiring hearing; prompt conclusion of the hearing; and steps to ensure that all post-hearing decisions issue within 95 days from the election, rather than a median time of 95 days.

- In situations where the resolution of the representation case is blocked by a related unfair labor practice case, to give the highest priority to the completion of the Section 10(j) injunctive relief in appropriate circumstances.

- Finally, after Board certification of a union's election victory, to expedite the resolution of the unfair labor practice case (which, under the Act, is the employer's vehicle for obtaining judicial review of the certification). These cases are called "test of certification" cases and

typically entail the issuance of a Board order to bargain, based on the certification, and enforcement by a federal court of appeals. At present the Region issues complaint in such cases in a median time of 44 days after the charge is filed. We believe that we can, and should, complete the investigation of all of these cases, and issue the complaint, which is a prerequisite for Board action, within 21 days of the filing of the charge.

c. The Reinvention of the Agency's 10(j) Program

Section 10(j) of the Act authorizes the Board to seek injunctive relief in U.S. District Courts in situations where, due to the passage of time, the normal processes of this Agency will not provide an effective remedy. A district court acting under §10(j) typically directs the respondent union or employer to cease and desist from unlawful conduct and to take certain affirmative action, such as offering reinstatement to unlawfully discharged employees.

For example, protection of employees against discrimination for supporting a union is a key provision of the Act. The Board and Courts have long recognized that discharge of leading union adherents is among the most effective means of halting an organizational campaign. Section 10(j) can be utilized to prevent the most damaging effects of such employment discrimination by swiftly returning the discriminatee to the workplace. In this regard the findings of the Dunlop Commission are instructive. The Commission noted that the incidence of illegal firing has increased from one in every 20 elections, victimizing one in 700 union supporters, to one in every four elections, victimizing one in 50 union supporters. The Commission comments further that:

> The "in kind" relief of reinstating workers who were illegally fired often takes a long time to effectuate. Before an employer is legally obligated to reinstate a discharged employee, the case goes through a four-stage

> procedure. The employee's charge must first be judged meritorious by the Board's regional office, then by an Administrative Law Judge following a full scale trial, then by the Board itself, and then by a federal appeals court—a process that takes an average of three years to complete. (at p.71)

In contrast, a district court order under §10(j) (which can be sought at any time after a complaint has issued), directing immediate reinstatement and cessation of further unlawful conduct, can promptly remedy the harm caused by the violation. Furthermore, the granting of such relief frequently leads to a settlement of the entire case.

Another example are cases in which unions engage in violence or other coercive conduct, in the course of strike or picketing activity, that is beyond the capacity of local authorities to control. In these cases, 10(j) proceedings can provide prompt relief.

The objective of the thorough review we have undertaken was to determine whether we were doing enough to properly and fully implement §10(j). The widely-held view was that far more could and should be done to fully utilize this important remedial device.

Several specific steps have been taken to implement the prioritization of 10(j) cases:

- **Publication of our Program:** We have informed the public of our willingness to utilize 10(j) more frequently and the means we will employ to identify appropriate cases for such relief. Our message has been communicated at bar association meetings, speeches and in published memoranda in labor law publications.

- **10(j) Manual:** We have prepared and distributed an extensive 10(j) manual to provide specific assistance to the regional offices with respect to investigating

and litigating 10(j) cases. The manual, except for specific internal instructional deletions, has been made available to the public.

- **Early Identification of Potential 10(j) Cases:** We have issued guidelines to assist regions in identifying 10(j) cases as early as possible, either on intake, or as early as possible during the course of the investigation.

- **Training:** We have conducted training sessions in Washington and two other cities which were attended by a senior trial attorney from each regional office. The attorney in attendance was charged with the responsibility of training the balance of the legal staff in his or her respective regional office.

- **10(j) Coordinators:** Each region has designated a senior attorney or supervisory attorney to coordinate all aspects of 10(j) activity.

- **10(j) Prioritization:** Once a potential 10(j) case is identified, it becomes a priority matter. The expeditious processing of such cases becomes a team effort with enhanced supervisory involvement. Supervisors have been sensitized to the possible need to reassign other work so that maximum focus may be placed on the 10(j) case.

- **Evaluation:** We have emphasized that 10(j) work should be included in our measurements of performance and quality.

The new focus has already resulted in a dramatic increase in 10(j) injunctions. In the six months since we first began to implement these changes, the Board has authorized more 10(j) cases than were authorized in the entire preceding year (54

authorizations since March 1994; 42 for FY 1993; 27 for FY 1992). It is important to note that in spite of this significant increase in the use of §10(j) in the latter half of FY 1994, our success rate has remained as high as in previous years. This clearly demonstrates that the Act's 10(j) authority can be used more frequently with a great deal of success.

Unfortunately, such success does not come cheap. Section 10(j) litigation is considerably more labor-intensive than routine administrative litigation before the Board. First, the investigative process must be carried out with all possible speed to ensure that the Board's perceived delay does not suggest to the court that the case lacks urgency. Second, the investigation must deal with not only the merits of the charge, but also the impact of the conduct on the Board's ultimate ability to fashion a remedy. Third, the process of review by the Office of the General Counsel and by the Board entails staffing. Finally, the litigation itself entails extensive written submissions to the court. And, in those cases in which the respondent successfully invokes discovery (over Board counsel's routine objections), the time and labor factor can multiply several times over.

The full implementation of the 10(j) initiative will require that our staff give more detailed attention to a greater proportion of cases than ever before. We nonetheless believe that the additional resources now being directed toward this previously-underutilized remedial tool are long overdue. There is, however, a price to be paid, in the form of a backlog of cases that lack the urgency of the 10(j) and representation case matters described above. We began to witness a distressing growth in overage cases even before the current appointees began to emphasize 10(j) and R case processing. The rate of overage unfair labor practice cases has nearly doubled, from 6.4 percent in June of FY 1993 to 11.6 percent in June of FY 1994.

d. Refocus on Quality

The third operational priority established by the General Counsel is a commitment to quality case processing. We do not believe that we can effectively enforce the Act without a renewed emphasis on quality. In May, the Priorities Committee identified the perception of many members of the public and our staff that an emphasis on time targets as a measure of performance had come to predominate over our traditional emphasis on quality, which was already overburdened by diminishing resources. This conclusion echoed the earlier report of regional supervisors and managers. This priority reestablishes the Agency commitment to achieving top quality work product as a primary indicator of our effectiveness. If the achievement of the other areas of priority were to result in the erosion of our ability to achieve quality, we would fail the Agency and the public.

i. Partnership Initiatives

To effectuate this priority, the Partnership Council has launched a number of initiatives to address issues and concerns central to our ability to achieve the goal of quality. These are:

- **Performance Measurement/Time Targets/Appraisals:** In one of its most important initiatives, the Partnership Council has agreed to establish a subcommittee to examine and evaluate performance measures and the related subject of appraisals. What gets measured gets done. The Partnership Council has determined that the Agency's existing time targets and performance measures should be re-assessed in order to determine what kinds of outcomes they encourage and how those outcomes effectuate the purposes of the National Labor Relations Act. Our performance measures have remained largely

unchanged over the past 30 years and must be reviewed in light of the NPR and the Agency's new operational priorities.

The Agency's Acting Inspector General has independently begun to conduct a review of performance measurement. The purpose of that review is to determine the accuracy, timeliness, and appropriateness of data that is used, *inter alia*, in the allocation of Agency resources. The Partnership subcommittee's consideration of the issue will include the results of the Acting Inspector General's inquiry.

Our current system of setting staffing levels for regional offices is based on case intake. There appears to be a developing consensus that an input-based formula is not sufficiently discriminating and results in a less than equitable distribution of available resources. The Partnership subcommittee will address this issue as well.

Finally, in conjunction with its consideration of the performance measurement issue, the Partnership's new subcommittee will address the related issue of redesigning the Agency's appraisal system. A recurring theme of the Partnership's discussions is that resources could be redirected to direct casehandling purposes if the Agency's current appraisal systems were streamlined. In the regional offices, for example, appraisals are prepared each year for 1,075 nonsupervisory professional and clerical employees; it is not unusual for these appraisals to be four or five single spaced pages in length. The appraisals of our 216 field supervisors and managers have already been reduced in length by 40 percent. We are confident that the Partnership will find ways to substantially reduce the time taken to prepare these appraisals while preserving their purpose.

- **Work Schedule Adaptation:** The National Performance Review recommended, and President Clinton has directed, that a more "family-friendly" workplace be created by expanding opportunities for federal workers to participate in flexible work arrangements, consistent with the mission of the executive branch to serve the public. The Agency is recommitting itself to this important program area. The Agency, through negotiations with the unions that represent its employees, already has in place a number of such programs. Our collective-bargaining agreements provide for flexible work arrangements such as compressed, flextime and part time schedules, and provide extended leave for maternity, paternity and dependent care purposes. As discussed below, the Agency is experimenting with an intermittent schedule for two experienced employees working out of their homes in non-office cities.

The Partnership has decided to give priority to ensuring that the Agency is complying with the President's directive. Consistent with the four program components contained in the President's directive, the Partnership will consider such issues as surveying employee interest in flexible work arrangements that would aid them in meeting family responsibilities; identifying agency positions and exploring other relevant criteria to determine which employees could participate in such arrangements; assessing the training and support required to implement these arrangements; evaluating the potential impact that such arrangements could have on cost savings and our ability to fully and efficiently serve the public; and identifying any barriers that may exist to the implementation of such programs. The Partnership will also consider the feasibility of short term experimental programs to assist in the evaluation of other flexible work arrangements.

- **Review of Clerical Function and Compensation:** In order to improve the career opportunities and working environment of our valuable clerical and administrative support groups, the Partnership Council has agreed to undertake a thorough examination of issues related to that portion of our work force. Those issues include: the appropriate scope of clerical responsibilities, training, compensation, and upward mobility (including bridge programs). The advent of automation, as well as other workplace change, is gradually redefining the clerical and administrative employee's function throughout business, industry, and government. The NLRB, while perhaps a latecomer to comprehensive automation, is making rapid strides. A late-model PC is now on the desk of virtually every Agency employee with a need for one. We are beginning to install voice mail and e-mail systems. The CATS program, discussed below, promises to sharply reduce the amount of paper used by the Agency and to facilitate direct professional-to-professional communication. In these circumstances, reexamination of the role of the clerical/administrative employee in the Agency's work is a high priority for the Agency and the NLRBU, the union that represents such employees in the field and at Headquarters. That review has begun in the Partnership Council.

ii. Agency Training Programs

In addition to the Partnership initiatives, the Agency remains committed to a well developed and consistently implemented training program as essential to maintaining and improving the quality of our work. Our training needs are more critical than ever in view of our new priorities and the changes which must be made in our case processing techniques and procedures. A critical need which we plan to meet in 1996 is in conducting broad based field training, including supervisory and managerial training (particularly focusing on redefining supervisory roles in line with streamlining);

innovative investigative and litigation techniques in order to become more effective and efficient; effective control and management of representation hearings; effective use of Section 10(j); and a wide variety of substantive legal training.

This type of training needs to be carried out "in-house" and on a national basis. These programs typically bring staff from headquarters and regional offices together for a one week immersion course which allows not only for intensive training but for the sharing of experiences in successful casehandling.

For over 30 years the Agency has found these programs to be at the heart of high quality performance. Unfortunately, restricted budgets affect our ability to carry out these programs. Our last major training programs occurred in 1992, when we conducted 1-week programs for new professional employees, new supervisors, basic trial techniques for attorneys, compliance training, and training of our office managers. Our budget has not allowed for general supervisory training since 1989; for hearing officer training since 1990; for general managerial training since 1988; or for general field examiner training since 1979. Except for new employee training, to be conducted later this month, and the training for administrative law judges scheduled for January, 1995, we do not plan to conduct additional training of this type through Fiscal Year 1995, because of budgetary restrictions.

Other aspects of Agency training include a tuition reimbursement program wherein employees continue to develop essential job skills through outside courses which are underwritten by the Agency; regional training programs which emphasize ongoing developments in legal and procedural matters; regional clerical employees training; and the development and production of detailed training manuals, casehandling manuals, training monographs and training video tapes. The Agency's

ability to maintain and improve its overall quality through a commitment to training is directly related to our available funding.

2. Operational Programs Implemented

The processes described above have, in only 6 months, yielded numerous directives intended to free up resources for devotion to the priorities and other casehandling needs. As indicated, these are merely the first steps of what we intend to be an ongoing process of review of our practices and procedures. We stress that while we expect these measures to yield concrete benefits in terms of staff availability and other savings, we do not believe these steps will provide anywhere near the additional resources necessary to adequately implement our reinvention program. The steps taken thus far include:

a. Greater Casehandling Discretion

- ***75 Mile Radius:*** Charging parties situated within a 75-mile radius of the Regional Office are now encouraged to provide their evidence within the Regional Office, subject to the exercise of the Regional Director's discretion to vary from this policy in appropriate circumstances. Further, Directors have been granted the discretion to schedule hearings and trials within this same radius in the Regional Office, depending on the needs of each particular case.

- ***Travel Coordination/"Clustering Cases":*** The Regions are requested to "cluster" cases on a geographic basis, with appropriate cognizance given to our casehandling priorities

- ***Investigatory Subpoenas:*** We have granted Regional Directors greater discretion in issuing investigatory subpoenas *duces tecum* for the production of documents from parties and nonparties alike, as well as subpoenas *ad*

testificandum, to compel testimony from nonparty witnesses, to secure evidence not conveniently available from other sources, when that evidence may materially aid a merit determination and when foreseeable barriers to enforceability are not present. Previously, in order to insure uniformity of practice, authorization for subpoenas had to be sought from Washington.

- ***Telephone Affidavits:*** Affidavits have long been the foundation of our unfair labor practice investigations. Our long-standing practice had been to have a field agent travel to a witness's place of business or residence to take virtually every affidavit. This was a major cost item. It was based on a concern that witnesses would not be as open and cooperative and that credibility problems would arise which might have been avoided if the Board agent had been present in a face-to-face meeting with the witness. Our initial review of this matter has demonstrated that these problems are real, but can be addressed, out of necessity, by close supervision on the part of regional office personnel responsible for securing usable and worthwhile evidence. Accordingly, to realize substantial savings of field agent time and travel cost, we have delegated to Regional Directors the discretion to use telephone affidavits for those witnesses where the quality of the investigation would not be substantially compromised.

b. Adjusting Performance Measures to Reflect New Priorities

Previously, the allowable ratio of overage precomplaint cases was 4 percent. In order to give the Regions sufficient flexibility to accommodate the priority afforded 10(j) and representation case matters, without imposing undue pressure on their staffs, we have increased that ratio to 10 percent. In recognition of the significant amount of effort frequently required to explore all possible avenues of compliance, we

have increased the ratio of allowable overage compliance cases from 5 percent to 10 percent, effective October 1, 1994.

c. Regional Office Staffing

- ***Flexibility in Determining Whether to Fill a Particular Vacancy with a Clerical or Professional Employee:*** The Agency is currently exploring with the NLRB Union ways to allow for greater flexibility by determining the mix of professional and clerical employees from within one Regional staffing ceiling, depending on the needs of the particular office. At present separate professional and clerical staffing ceilings are established for each Regional Office by Headquarters.

- ***Unpaid Student Volunteers:*** A number of Regions have successfully used the services of unpaid student volunteers, who, at times, earn credit hours for their work in the Regions. Regional Directors have the discretion to utilize the student volunteer program within their Region, to the extent they wish, as long as the terms of the volunteer arrangement are in accordance with the June 1, 1982 Memorandum, "Student Volunteer Services Program."

- ***Bilingual Employees:*** In carrying out our limited hiring program this year, we have emphasized the hiring of bilingual professionals. The recruitment and retention of bilingual professionals will continue to be an area of focus for the Agency.

- ***Use of Intermittent Employees:*** In the past, we have employed WAEs only for the purpose of conducting elections. We have begun a pilot program, through which two experienced field employees are used, as needed, for investigations in the Monterey, California and Salt Lake City, Utah areas. This program has the potential to place agents "on the spot" on an as-needed basis in locations that

experience frequent, but not regular, case activity. If, as we anticipate, this program is successful, we intend to explore implementation at other locations.

d. Labor Relations Coordinator

With the development of the Partnership Council and the significantly expanded role of our unions in the reinvention process, it became more apparent that there was a need to better coordinate management's labor-relations responsibilities. To accomplish this objective, we have restructured the labor-relations aspect of our management function. The assistant to the General Counsel will be responsible for labor relations under the General Counsel's immediate authority. The responsibilities of the position will include advising the General Counsel and senior managers on labor relations issues; coordinating bargaining issues and other labor relations matters between Divisions under the General Counsel's supervision; being available to the Unions representing Agency employees regarding matters of concern to them. The incumbent will also be responsible for fostering labor relations policies such as encouraging the resolution of disputes at the lowest level, establishing partnerships at local bargaining levels, training in partnership concepts and techniques and in interest-based bargaining; and generally facilitating improved labor relations. The restructuring will permit the Office of the General Counsel to establish and direct policy while allowing the managers to work with union officials to resolve labor relations matters.

e. Increased Casehandling Guidance in Developing Areas

In order to better assure consistency and to provide direct assistance to the regional offices, Operations-Management has undertaken to identify cases of a similar nature that arise in many regions. Once such cases are identified and analyzed, investigative approaches and legal analysis is developed to help regional offices expedite and more effectively handle the cases.

The first such cases identified are those involving the efforts of unions in the construction industry to "salt" nonunion employers with pro-union employees who will then attempt to organize the unit. This is a sharp departure from traditional, "top-down" organizing in the construction industry. This practice, and concomitant employer resistance, has led to the filing of hundreds of charges in many regions, alleging the unlawful refusal by the employer to hire the union "salts." These cases are proving to be some of the most difficult and time consuming to investigate. There are often numerous alleged discriminatees and frequently it is necessary to subpoena employer records; it is not unusual for these subpoenas to require court enforcement. To assist Regions in investigating these cases, we have developed a guideline for the regions setting forth applicable legal principles and investigative techniques, and have designated a member of Headquarters staff to act as a coordinator of these cases.

f. Paperwork Reduction

- ***Complaints and Notices of Hearing:*** We have eliminated the requirement that all complaints issued by the regions be transmitted to Washington headquarters. The more than 3,000 complaints issued annually by our regional offices are no longer routinely reviewed.

- ***Bilateral Formal Settlements:*** Regional Directors have been delegated the authority to approve bilateral formal settlements on behalf of the General Counsel and to submit these settlements directly to the Executive Secretary. Previously, all formal settlements were approved by the Division of Operations-Management before being submitted to the Board. Unilateral formal settlements will continue to be submitted to Operations-Management for approval.

- ***Recommendations for Enforcement:*** The Regions no longer need to submit a copy of this document to Operations-Management, but must ensure that Enforcement Litigation receives the recommendation.

C. OTHER PROJECTS

1. Customer Service Standards

In addition to the customer surveys, the Agency, through the Partnership Council, has approved and published customer service standards which cover the Agency's Public Information Program, the processing of unfair labor practice cases and the processing of representation cases. (They are attached as Appendix D.) For each of the three areas, the published standards will provide Agency customers with a detailed description of what services they can expect, and the level of those services in terms of substantive standards and, in many cases, timeliness standards. The representatives of Agency management and the unions which represent Agency employees were able to jointly produce these standards, which will provide the public with valuable information upon which to properly gauge their expectations and to evaluate our performance. Upon the completion of the surveys and the analysis of those results, the Agency's customer service standards will be reevaluated and possibly modified to better meet the needs of our customers.

2. Buyouts

As soon as the Federal Workforce Restructuring Act of 1994 (FWRA) was signed into law by the President, the Agency moved quickly to take advantage of the voluntary separation incentive payments (buyouts) authorized therein. In conjunction with our employee unions, we conducted the Agency's first buyout program in April.

The Agency was forced to make some hurried decisions in this regard, because FY 1994 was already half over before the buyout program became law. To offset the costs of a buyout program with significant salary savings in the remainder of that fiscal year, the Agency had to limit its buyouts at that time to higher-salaried employees. Among that group, it was felt that Headquarters GM/GS-13 through 15 employees, taken as a whole, represented that portion of the workforce in which the Agency could most afford to reduce staff. Only 6 employees in the target group took a buyout, thus creating a need to consider further buyouts.

As its next buyout program, the Agency intends to offer buyouts in October to Headquarters employees. The Agency does not intend to offer buyouts to its employees in the Regions because of general understaffing in those offices.

3. Expedited Litigation to Prioritize Casehandling

We are developing a system to enable Regional Directors to designate certain cases for "expedited hearing," as a way to prioritize our trial docket. The types of cases contemplated for this treatment are those for which 10(j) relief also normally would be considered (as well as those entitled to statutory priority at the hearing stage). We are also considering the possibility of expediting the hearings in cases where post-election objections and/or challenges are necessarily consolidated with parallel unfair labor practice cases, so that a prompt resolution of the representation question is not unduly delayed by the more time-consuming unfair labor practice litigation. Although some nonpriority cases undoubtedly will take longer than under the present "first-in, first-out" system, other cases—involving harm to fundamental statutory objectives or impact on a large number of employees—will be expedited.

4. Calendar Call

We are planning a 1-year experiment utilizing a calendar call system for trials in selected Regional Offices. Under this system, four or five trials will be scheduled to begin on a Monday morning, and all attorneys and witnesses will be required to stand ready to commence their cases upon a few hours' notice. Thus, if the first case called settles or takes less than 1 day to hear, the next case in succession immediately will be called up for hearing. Although this procedure places a heavy burden upon counsel, the parties and their witnesses, it maximizes the efficiency of the tribunal, and is utilized by many of the Federal and state courts.

5. United States Postal Service Cases

We have met with the Chief Labor Counsel of the United States Postal Service in order to develop a better modus operandi with respect to the numerous case filings involving the Postal Service. Several of our regional offices have reached agreement with the Postal Service Labor Law office having jurisdiction over their area for timely responses to questions submitted in writing by our field staff, following investigation of the charging party's allegations. Thus, the Postal Service has pledged to timely respond and, with respect to charges alleging the unlawful refusal to furnish requested information to collective-bargaining representatives, to endeavor to accommodate the union's request in an effort to avoid the litigation of minor local informational issues. We are in the process of developing these arrangements with other Postal Service Labor Law offices so that the delays and difficulties we have experienced in obtaining evidence and legal positions can be avoided.

6. Deferral to Other Forums

The Board pursuant to its policy enunciated in *Collyer Insulated Wire* 192 NLRB 837, has long deferred the investigation and adjudication of most unfair labor

practice cases which are also cognizable under a negotiated grievance arbitration procedure contained in a collective-bargaining agreement. We are studying the extension of this doctrine to permit deferral of cases involving the failure to make contractually-mandated payments to third-party employee benefit funds to judicial proceedings based upon conventional breach of contract principles or under ERISA. Thus, the Board would, absent unusual circumstances, require the charging party to exhaust its available recourse in the courts to obtain the contractual required pension or welfare payments, or dues withheld, before the Agency would actively become involved in the processing of the case. We are in the process of discussing this policy with labor organizations, who would be most affected thereby, as well as with the bar.

7. Staffing Formula

Our current system of setting staffing levels for regional offices is based on case intake. We have concluded that an input-based formula is not sufficiently discriminating and results in a less than equitable distribution of available resources. Accordingly, as noted previously, the Partnership Council has established a subcommittee that will endeavor to develop an output-based staffing formula which, after testing and validation, could replace our existing system.

8. Resident Agent Program

The Agency is currently considering the possibility of establishing "Resident Agent" positions in geographically dispersed areas in our field organization and the topic will be fully considered by the Partnership. As noted earlier, we are currently experimenting with two intermittent employees who are performing a wide variety of professional work in areas which are remote from any existing field office. The experiment will enable us to better evaluate various alternate work arrangements

including the possible use of full-time professionals assigned as Resident Agents. Because of Reinvention's focus on decentralization, employee empowerment, increased productivity, and customer service, those involved in the Partnership process support the current experiment to test the belief that cases can be handled more quickly and effectively through such assignments. The Resident Agent would spend less time in unproductive travel, travel expenditures will be reduced, the Agency will be more accessible to the public, quality will be enhanced by employee empowerment and supervisory time will be decreased so that it can be utilized for more direct case handling responsibilities.

9. Revision of Unfair Labor Practice Case Handling Manual

The Unfair Labor Practice Manual is a tool used daily by Board agents in our Regional Offices; it contains a wealth of procedural information and guidance. An out of date manual is an impedance to effective public service. Further, as more authority is delegated to the Regional Offices, it becomes more important than ever for relevant national guidelines and case processing procedures to be clearly set forth and updated. By the end of the coming fiscal year, the entire Unfair Labor Practice Manual will be revised and made current by a joint Regional and Washington committee.

10. Agency Newsletter

The Agency had a "house organ," *Across the Board*, until 1980, when it foundered for lack of interest. The in-house newsletter has been revived, to be published on a regular basis, with the first issue having been published. The publication will disseminate ideas and information about our "best practices," share new ideas and approaches to Agency work, and promote better understanding of what is happening throughout the Agency.

D. INFORMATION SYSTEMS/AUTOMATED DATA PROCESSING

1. Case Activity Tracking System (CATS)

The Agency has undertaken a major initiative to fully integrate the automated information processing capabilities of its various organizational components into a single comprehensive system. The system will achieve uniform case tracking capability and uniform information management. The main component of the system will be its ability to track the progress of every case in the Agency pipeline from the time it is first filed until final disposition, including court enforcement, bankruptcy actions, etc. In order to achieve this goal, CATS, an umbrella committee composed of representatives from all divisions of the Agency, was formed. Employee representatives designated by the Agency's employee unions are key and active participants. Through the use of numerous task groups, CATS will be the means by which the Agency will accomplish this ambitious program. The task groups include: case activity and tracking both in the regions and at Headquarters; management information; compliance; litigation support; legal research; document management; forms; records management; and archives.

Under the program, multiple separate case tracking systems in various Board and General Counsel divisions will be eliminated and our current inability to share automated case-related information between divisions will be replaced with a unified shared information system. A key to the successful management of thousands of cases flowing through a complex series of investigative, analytical, legal and administrative functions is to know where in the pipeline things are working well and where they are not. Proper allocation of resources, better coordination of priorities, and effective utilization of staff will be significantly improved through an integrated tracking system

2. *Information Management*

The NLRB's principal work is investigative and legal; its office environment is similar to that of law firms. This means that all of its non-centralized functions are paper-based and intensively document oriented. As regards information management, there are several major objectives.

- One objective is to automate the information the Agency attorneys, investigators, supervisors and managers need to meet their requirements as they handle daily case work. Quality and service to the public will be easier to maintain as automated research tools enhance the capability of NLRB attorneys and examiners.

  The Legal Research Branch, which prepares indexed summaries of Board, court, and related decisions, has new internal automation and its important indexes and scopes will soon become available to all employees on disk or on-line. Numerous demonstration projects are underway to introduce on-line legal research into several legal and business databases of interest to NLRB employees. These include NLRB internal researching of Advice memoranda and Contempt litigation work as well as the aforementioned Legal Research Branch indexes and scopes. Also, external research through commercial sources, particularly Westlaw, is available now in all offices. An effort to use bulletin boards operated by the Government Printing Office and the Department of Commerce to disseminate Board Decisions and other issuances is moving rapidly to the pilot stage.

  The public perception of Agency services and capabilities will be substantially augmented by our faster response and improved access to and use of legal and other information. A major contribution to encouraging better labor relations and

minimizing business disruptions will be achieved by using our new technology to identify and target Agency resources to resolve issues arising from recidivist employers and labor organizations.

- A second objective is an Agency outreach initiative. By encouraging public and private labor-management groups to share their ideas and needs, the Agency will be able to better produce, and make available, information which will be useful to the public in the facilitation of collective bargaining issues of general concern. At present the Board's annual report provides Congress and the public with a variety of valuable statistical information. However, through this outreach program and an improved information system, we will be able to better evaluate the type of information and the manner in which it is reported to best serve the needs of our users.

- A third objective is enhanced electronic communication. Electronic mail for internal use is under rapid deployment, and limited external connections have been established. Costs such as those for mailing and paper-handling will be reduced by enhanced electronic communication among staff via their desktop PCs.

The implementation of our CATS program will eliminate existing case systems and mainframe hardware. The major existing system, CHIPS, is basically a data repository that was developed in the mid 1980s. This system does not provide support to the actual case work. In addition, there are currently separate systems for different areas of case activity. The Regions, Board, Judges, Representation Appeals, Advice and Enforcement are supported by systems that, as noted above, are not truly integrated into the operations of the offices or with each other. This lack of an

integrated approach to case tracking is a substantial weakness of current automation that is costly in terms of support.

The Agency has made significant strides in the last few years to provide its staff members at all levels with the most current automation equipment possible. Our preliminary automation efforts have been successful and CATS will allow us to maximize the effectiveness of our commitment and investment. The goal of CATS is a more effective work force able to handle anticipated increases in case intake without a proportionate increase in staff. The plan will provide for a multi-year implementation strategy that will require significant funding. Agency employees, from top managers to the rank and file, are interested, involved and supportive of this effort to improve, with appropriate automation, the now often time-consuming task of handling cases.

As stated above, it is the objective of CATS to produce an automated case tracking system and related support services so that the Agency can better manage its caseload and provide its employees with better resources for performing their work.

E. STREAMLINING SUPERVISION

The Board is confident that normal attrition and a limited buyout program will enable it to meet the objective of reducing its overall FTE to required levels. The more difficult streamlining challenge is to allocate the remaining FTE to most effectively accomplish the mission of the Agency.

Our streamlining plan is necessarily a work in progress. In our first 6 months a number of new initiatives, described herein, have been launched to better ensure that high quality casehandling services are provided to the public in a timely fashion. Our experience with those initiatives is likely to reveal both new opportunities and new obstacles to streamlining.

The issue of streamlining casehandling supervision has received particular attention from management, as discussed below. That issue, however, is also of primary concern to our employee unions, who under E.O. 12871 and OPM's implementing guidelines, will participate through our Labor Management Partnership in decisions regarding the numbers, types, and grades assigned to organizational subdivisions or work projects. The ideas set forth here were developed prior to any systematic consideration of employee views regarding work processes, supervisory ratios, and reinvention generally. Our current working hypotheses are thus subject to being revised though the Partnership process. Both the NLRBU and the NLRBPA have made emphatically clear that they have not yet agreed to any management proposal.

Finally, although the Headquarters administrative support functions have been targeted for streamlining by the NPR, those same functions are the ones that have been called upon to bear the brunt of the administrative work involved in complying with the NPR initiatives, as well as the initiatives launched by the Agency's new leadership. Accordingly, while preliminary review of the opportunities for consolidation and reducing vertical layering have been undertaken, the more difficult and more thoroughgoing process of scrubbing administrative functions to eliminate unnecessary duplication and review has just begun.

1. General Principles

Our first focus has been to establish guiding principles for the streamlining of supervisory administration. We have developed the following objectives which have been proposed for consideration through the Partnership process:

- Reducing vertical layering so that there are only two levels of review: one thorough level—which, as a practical matter, is often carried out as part of the initial work on the case—and an additional level for policy and consistency.

- Delegation of routine casehandling decisions to the lowest practicable level; delegation of routine administrative functions to the lowest practicable level.

- Utilization of supervisory staff with maximum flexibility to perform direct casehandling services as appropriate.

- Increasing the ratio of unit employees to supervisors to the extent consistent with the Agency's paramount obligation to provide high quality timely legal service to the public.

2. *Specific Objectives*

a. Field

Our current plan is that, as an initial step, case supervision in all our regional offices should be brought into conformity with the following prototype:

- No more than 30 percent of a field supervisor's time should be devoted to purely supervisory functions (e.g., writing the initial and frequently the only comprehensive appraisal of their team members, making effective recommendations for promotions and ratings for higher positions, granting time off, making case assignments, and authoritatively directing the processing of cases).

- First-line supervisors should play an active part in the case production process. To enable them to do so effectively, we have decided that at least as a first step, a 1:6 supervisory ratio is generally appropriate. Currently, approximately 41,000

new cases annually are processed in the field by 688 nonsupervisory professional employees—an average of 59.6 cases per year, or 5 per month. Thus, assuming a team of 6, each supervisor would be required to be familiar with at least 30 different cases each month. In addition, to accommodate compressed time, annual and sick leave, and absences from the office for normal casehandling needs, our supervisors will engage in various forms of direct casehandling in order to insure that backlogs do not occur and that the practitioners and the public who desire to communicate with us are not unduly inconvenienced.

- Supervisors should give priority to enhancing the ability of attorneys to handle the increasing complexity of regional office work, due to the increasing incidence of federal court litigation involving Section 10(j) and 10(l) injunctions, bankruptcy, and subpoena enforcement. With respect to the Agency's new initiatives in the area of speeding up processing of representation cases, supervisors should ensure that quality is not sacrificed in the drive for prompt case decisions.

- Field supervisors should not only be actively involved in case processing judgments, but also should directly handle many aspects of case work. For example, they will be expected to accept and return telephone calls while the investigator is in travel status or otherwise occupied with a witness or research. They also will be expected to engage in research and to interview witnesses to assist in resolving cases. Further, as our work has become more and more complex as well as time consuming, supervisors will be expected to handle certain casehandling assignments by themselves, including representation-case decision writing and litigation work, depending on the particular needs of the office.

Within the foregoing framework, the Agency has identified certain areas where field supervisory positions can be eliminated: There are 13 Regions (out of 33) where, because of lower case filings, the professional staff is 25 or fewer and there is no more than one Resident (satellite) Office under the supervision of that Region. In those Regions, we would reduce the supervisory staff by one person by attrition. In addition, in some of our larger Regions, we would not fill a supervisory vacancy and instead would assign a full team to the Deputy Regional Attorney, who would then function as a first-line supervisor in that respect, rather than an additional layer of review. Whether further streamlining is appropriate will require careful consideration in the Partnership process.

b. Headquarters—Office of the General Counsel

Our ideas for streamlining supervision in the Headquarters offices with casehandling responsibility are summarized below. We emphasize again that these ideas are subject to further consideration in the Partnership process.

i. Division of Enforcement Litigation—Office of Appeals

The Office of Appeals is the instrument through which the General Counsel exercises final, judicially unreviewable discretion whether to reverse or sustain decisions of Regional Directors not to proceed with unfair labor practice charges filed by members of the public. Confidence that Regional Director decisions will receive careful review is important to the fair and effective working of the statute. The Office of Appeals legal staff has been reduced from 28 attorneys in 1987 to 22 attorneys today. That reduction, in tandem with a recent upsurge of appeals, the increased complexity of appeals (due in part to the effectiveness of the IO Program in screening out clearly nonmeritorious cases), and an increase in reversals reflecting the policies of the new General Counsel appointed by this Administration has resulted in a substantial

backlog of unreviewed cases. In order to address that problem with respect to management and attorneys, and to help prepare the Office of Appeals to meet a projected increase in its case load, the General Counsel and the National Labor Relations Board Professional Association have agreed to use the partnership model to "reinvent" the Office of Appeals--and by that means also to serve as a model for further reinvention as regards managers and attorneys in other headquarters divisions.

Among the reinvention ideas being so proposed for consideration in Appeals are: (1) streamline review procedures within the Office by eliminating unnecessary supervisory layering and empowering employees; (2) develop procedures for expediting the processing of cases in which the Regional Director is reversed and an unfair labor practice complaint is authorized by the General Counsel; and (3) develop flexible work schedules for attorneys.

ii. Division of Enforcement Litigation—Litigating Branches

Four of the five branches in the Division of Enforcement Litigation are engaged in litigation before the courts. The so-called "litigating branches" (Appellate Court, Special Litigation, Contempt, and Supreme Court) have traditionally been organized on a law firm model. That is, all are organized on the assumption that a team approach is the best method of effectively producing high quality briefs (or other litigation outputs). All assume that casehandling is ordinarily most effective if the first-line supervisor is a full partner in the production process and if there is significant supervisory input as to casehandling strategy and identification of legal and policy issues at the front end in order to minimize the need for revision and oversight.

In addition to their direct involvement in the production process on a team basis, litigation supervisors are called upon to perform casehandling functions on a solo basis. Such supervisors (including second level supervisors) regularly argue cases in

court, participate in trials or depositions, write briefs and legal memoranda, process summary enforcement cases, and handle overflow case work from other branches. That flexibility in the use of the supervisory staff is necessary if the Agency is to meet the external deadlines imposed by the courts.

The appropriate number of levels of oversight and review rises as the importance and potential precedential effect of a decision increases. Nevertheless, even in the litigating branches, the two-levels-of-review principle is the norm and only in exceptional cases are higher level officials involved. Furthermore, when additional levels are involved in the production process, that involvement normally comes in the form, not of review, but as an additional resource brought to bear on the production process itself.

Because supervisors and managers in the litigating branches regularly perform substantial direct casehandling functions, subject to limited review, the existing ratios of supervisors to attorneys seem, at this level of analysis, reasonably well adapted to the NPR goal of more efficiently providing high quality legal services in a timely manner. Nevertheless, on the basis of our preliminary review, we are examining several positions that we would propose be eliminated through attrition.

iii. Division of Advice

The Division of Advice consists of three branches, each of which provides different opportunities for streamlining:

1. The Regional Advice Branch is responsible for processing requests from the regional offices for advice on whether to issue complaint in the most difficult and novel cases arising in the regions. Advice supervisors work directly on casehandling and their input is not simply a matter of review and revision, but is a substantive part of

creation of the product. In addition, the Advice supervisors on their own handle 25 to 30 percent of the cases submitted through a screening process. On the basis of management's preliminary review, we are examining several positions that we would propose be considered for elimination through attrition.

2. The Injunction Branch considers whether an injunction for interim relief should be sought from a federal district court pending the resolution of an unfair labor practice complaint by the Board. It also handles appeals from the denial of an injunction.

As in the litigating branches in the Division of Enforcement Litigation, the supervisors in the Injunction Branch all perform substantial line work. In addition, because of a sharp increase in the branch's case load following the Agency's new 10(j) injunction initiative, the supervisors have a particularly heavy training responsibility because it has been necessary to utilize attorneys and managers outside the Injunction Branch to handle the increased inflow. At the present time, it does not appear feasible to reduce the supervisory complement in the branch.

3. The Legal Research Branch prepares indexes and digests of NLRB and court decisions and handles requests made under the Freedom of Information Act. In an effort to streamline its operations, the Branch is presently considering methods of simplifying its work processes.

iv. Comparison With Other Agencies

The approach we suggest for the General Counsel's field and headquarters casehandling offices is in accord with the approach taken by other Federal agencies with professional staffs composed largely of attorneys. Relevant supervisory ratios are:

Federal Communications Commission	1:5
Securities and Exchange Commission, Enforcement Division	1:6
Federal Trade Commission	1:6
Department of Justice	1:3 to 1:12
DOL, Office of Solicitor	1:5

v. Division of Operations-Management

The Division of Operations-Management serves as the management arm of the General Counsel for field operations. The primary responsibilities of the Division are to ensure conformance with General Counsel policies regarding all aspects of case processing in the field offices, and to develop and implement General Counsel programs and initiatives governing their effective administration.

The Division's staff allocates and monitors the staffing and fiscal resources of the field organization toward achieving maximum productivity, quality, and effectiveness. Since the Division plays a critical role in the management of the field casehandling, staffing and budgetary systems, it therefore has a major responsibility for developing, implementing and assessing the reinvention of regional operations.

At the beginning of Fiscal Year 1993, the authorized Division of Operations-Management staff numbered 32: 20 professionals and 12 clericals. At present, authorized slots are at 32. Since 1990, when the Division downsized from six districts to five, the Division has lost one SES Assistant General Counsel, two GM-15 Deputies, one GM-15 Special Counsel and three clericals, while gaining one GM-14 employee in the Office of the Executive Assistant. This represents a net loss of six positions or over

15 percent of staff. In effect, the Division has downsized significantly in the last several years.

Nevertheless, on the basis of further self-examination, the Division has decided to eliminate two additional positions by attrition. As soon as the proposals to delegate further responsibility to the Regional Directors, with reduced oversight from Washington, and the General Counsel's priorities and proposals are fully implemented, the Division will again review its operational structure to ascertain whether further changes or downsizing is possible. In addition, the Division is working with the Agency's Inspector General who has recently agreed to review the functions of both the Division and the Division of Administration with an eye to determining whether there are any overlapping functions that could feasibly be consolidated or eliminated.

vi. Division of Administration

Between fiscal years 1993 and 1996, the Agency is currently projected to downsize 5 percent. During this same period the Division is projected to downsize at least 7.3 percent and will continue to downsize disproportionally to the rest of the Agency.

The Division intends to capitalize on new technology by implementing electronic bar-coding in its Case Records Unit and participating in an interagency pilot project seeking to develop a new automated personnel system ("Employee Express") that would reduce the processing times of certain personnel actions and eliminate the need for others. These innovations, when implemented, should eventually save several FTEs through attrition. In addition, the Division plans to convert several of its positions currently designated "supervisory," e.g., certain assistant-section-chief positions, to "nonsupervisory," and relieve those persons of the need to perform any supervisory duties.

Furthermore, as noted above, the Division is working with the Agency's Inspector General who has recently undertaken to review the functions performed in the Division and the Division of Operations-Management in order to determine whether there is any unnecessary duplication of functions. Additional streamlining will be achieved upon further reinvention of Federal administrative regulations and procedures which, as of this writing, are still under advisement. Until that time, the Division must continue to perform the function of ensuring the Agency's compliance with the multitude of laws and regulations that still govern personnel, procurement, and other administrative functions.

c. Headquarters—The Board

The Board is composed of five members each appointed by the President, with approval by the Senate, for a term of five years. The Board exercises full and final authority over the Office of the Executive Secretary, the Office of the Solicitor, and the Office of Representation Appeals. The Board appoints administrative law judges and exercises authority over the Division of Judges. Each Board member exercises full and final authority over a staff of legal counsel, each staff being under the immediate supervision of the Chief Counsel of the respective Board Member. The Division of Public Information and the Office of the Inspector General are also under Board authority.

The Board, like the General Counsel, is committed to decreasing the ratio of supervisors to employees consistent with the performance of its statutory functions under the National Labor Relations Act. Moreover, remaining supervisors will increasingly perform direct case handling work in addition to their supervisory responsibilities.

i. Board Member Staffs

There currently are 91 professional and 27 clerical employees on Board Member staffs. To assist in their deliberations and decisions on approximately 900 cases per year, each Board member is supported by a Chief Counsel, Deputy Chief Counsel and a staff of 16 attorneys. In addition, the Chairman's professional staff includes a Special Assistant and an Executive Assistant. In order to meet streamlining objectives, the Board is proposing that the number of supervisors on each Board member's staff be reduced from 3 to 2 by attrition or buyout.

ii. Office of the Executive Secretary

There are 5 professional and 18 clerical employees in the Office of the Executive Secretary. The Executive Secretary, as the chief administrative and judicial manager of the Board, receives, dockets and acknowledges all formal documents filed with the Board; assigns cases to the Board Members; monitors and tracks the flow of cases through the Board's decisional processes; issues and serves on the parties to cases all Board Decision and Orders; represents the Board in dealing with parties to cases; communicates on behalf of the Board with unions, employers, employees, Members of Congress, other agencies and the public; and certifies copies of all documents which are a part of the Boards files or records. The Office of the Executive Secretary has identified two positions that it will propose be considered for elimination by attrition or buyout.

iii. Office of the Solicitor

There are 4 professional and 2 clerical employees in the Office of the Solicitor. The Solicitor is the Board's chief legal officer and advises the Board on questions of law and policy; adoption, revision, or rescission of Rules and Regulations and

Statements of Procedure; pending legislation amending or affecting the Act; litigation affecting the Board, etc. The Office of the Solicitor assists the Board in deciding motions for summary judgment and drafts advisory opinions and declaratory orders for the Board concerning whether the Board would assert jurisdiction in a particular case. In order to meet streamlining goals, the Office of the Solcitor is proposing that the two professional staff vacancies that exist in the Solicitor's office will not be filled.

iv. Division of Judges

The Division of Judges is currently staffed as follows:

1	Chief ALJ/1 Deputy Chief ALJ
4	Associate Chief ALJ
1	Administrative Officer
64	Administrative Law Judges
36	Clerical
106	Total

The Chief Administrative Law Judge supervises the operations of this divisioh. Administrative law judges are responsible for the conduct of all hearings and for the preparation of all administrative law judges' decisions in unfair labor practice cases. The Chief Administrative Law Judge has final authority to designate administrative law judges who conduct hearings and make rulings; to assign dates for hearings presided over by the administrative law judges; and to rule upon requests for extensions of time within which to file briefs, proposed findings and conclusions. In order to minimize travel for hearings the sixty-four administrative law judges and Associate Chief Administrative law judges are stationed in four locations: Arlington, Va., New York, San Francisco and Atlanta. In 1993, 531 hearings were conducted and 568 administrative law judge decisions were issued. In addition to the formal decisions the administrative law judges obtained settlements in 542 cases. Under the streamlining plan, the 106 FTE positions in the Division of Judges will be reduced to 102 positions in fiscal 1995.

v. *Office of Inspector General*

The Office of Inspector General, with a staff of 6 professional employees and one staff assistant, exercises all responsibilities and authorities conferred by PL 100-504, including the initiation of investigations and audits, the issuance of subpoenas and the preparation of semi-annual and other reports relating to the programs and operations of the NLRB and its contractors to prevent and detect fraud, waste and mismanagement. The Office of the Inspector General will be reduced by one auditor position by attrition or buyout.

vi. *Division of Information*

There are 3 professional employees and 3 clerical employees in the Division of Information. The Division Information coordinates the Agency's information and public relations programs by conducting briefings and disseminating information of Agency activities through all news media and to companies, unions, law firms, academic groups, and others. It arranges for distribution of decisions and summaries of decisions. In order to meet streamlining goals, the Division of Information is proposing that one of the two professional vacancies that exist in the Division of Information will not be filled.

IV. HISTORY OF STREAMLINING EFFORTS

All of the foregoing reinvention initiatives come on top of a long history of Agency initiatives. Summarized below are several past initiatives which the Agency has undertaken which, where appropriate, we intend to continue and build upon.

A. PUBLIC INFORMATION PROGRAM

In Fiscal Year 1980, the Agency initiated a Public Information Program to provide information and assistance to individuals who contact our offices. Through the program we have been very effective in limiting the number of cases which might otherwise be filed with the Agency.

Individuals with employment-related questions or problems frequently contact this Agency, even though their inquiry may fall outside our jurisdiction. Through direct contact with the individual, a well-trained field professional explores the nature of the inquiry and determines whether or not a case should be filed. If the matter appears to be clearly outside the scope of the Agency's authority, the individual is discouraged from filing a case, and may be referred to another agency, if appropriate. Our experience shows that Agency efforts to appropriately discourage no-merit filings ultimately prove to be more effective when the individual knows firsthand that his situation has received the personal attention of a well-trained and accessible regional office professional as opposed to a form letter giving general information about the Act and an impersonal cautionary about jurisdiction. Of course, where the subject of the inquiry would properly form the basis for filing a charge or petition, we provide assistance in the filing of the charge or petition.

The Agency's public accessibility and the investment of time "up front" to explore an individual's complaint before any charge is accepted saves the Agency the very

considerable costs of investigating no-merit cases. When the Agency implemented the program in FY 1980, the charge acceptance rate was 9.2 percent. In FY 1993, the Agency responded to 213,079 inquiries from employees, employers, and labor organizations. Through the careful scrutiny of these initial contacts, Board agents serving as information officers, culled such complaints down to 11,268 actual charges filed, contributing to an overall unfair labor practice charge acceptance rate of about 5.3 percent. Similarly, during the first quarter of FY 1994, the acceptance rate was 5.2 percent. As compared to the 9.2 percent acceptance rate at the outset of the program in 1980, effective management of the Public Information Program now filters out approximately 10,000 potential cases from the Agency's intake. These 10,000 cases translate into a savings of approximately 200 FTE for field investigations as compared to the 63 FTE it requires to administer the program. There is also a savings of approximately $300,000 in travel funds.

B. SETTLEMENTS AND ELECTION AGREEMENTS

This Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to effect a voluntary resolution of meritorious ULP and representation cases. It has long been the NLRB's objective to serve parties through the settling of their disputes without the need for time-consuming and costly formal litigation. This Agency's training objectives, performance measurement system, and appraisals of field employees at all levels are appropriately focused on these objectives.

A consistently high settlement rate not only assures the prompt resolution of the majority of labor disputes, but enables our staffing resources to be directed to other casehandling needs. A 94.5 percent settlement rate was achieved in FY 1994 and a settlement rate of 94.5 per cent has been estimated for FY 1995 and FY 1996. Any

significant fluctuation in the settlement rate has profound repercussions on the Agency's monetary resources. In fact, a 1.0 percent drop in the settlement rate would cost the Agency and taxpayers over $2.0 million in expenditures. The Agency is justifiably proud that it has maintained a settlement rate of 90 percent or better since 1982.

In addition to the high settlement rate that the Agency maintains, the NLRB also maintains an election agreement rate of over 80 percent. That is, in over 80 percent of the elections held the parties have agreed to the conducting of an election without the need of a formal hearing and the issuance of a decision on the issues. The result is saving of time and money. The current election agreement rate is 86 percent.

C. CASE MANAGEMENT SYSTEM

For over 30 years, the Agency has set performance goals for the Regional Offices. These goals set time frames for the major stages of ULP and representation case processing. For example, we expect the field offices to make a determination regarding the merits of a charge within 30 days of the filing of the charge. We expect that determination to be implemented, either through withdrawal or dismissal of a charge which lacks merit, or through settlement or issuance of a complaint where the charge has merit, within 45 days of the filing of the charge. If these goals are not met, the charge is considered "overage." The tolerance for overage cases was raised in 1989 from 2 to 4 percent and we have recently raised it to 10 percent to reflect the reality of our staffing shortages. The overage backlog, as indicated earlier herein, continues to grow, and unless sufficient resources are made available, it will overwhelm this agency.

In the representation case area, after a petition is filed, the Regions attempt to obtain the parties' agreement as to who should be eligible to vote, and the other

particulars of the election, so that the election can be promptly held. If no agreement can be reached, a hearing must be held and a Regional Director's decision issued, resolving these issues. Our new goal is to issue such decisions within 45 days of the petition being filed. After an election is held, if there are objections to the conduct of the election or challenges to the ballots of some voters, our goal is to issue a decision resolving these issues within 35 days when no hearing is required, or within 95 days, if a hearing is required.

As noted earlier, the performance measurements under this system are being examined to account for newly-established priorities and to deal with certain inadequacies caused by median measurements. Nevertheless, the case management system that we have established and refined over thirty years has enabled this Agency to maintain its high standards of prompt public service even at times when there has been unexpected turnover or sharp increases in case filings.

D. OFFICE AND ORGANIZATIONAL RESTRUCTURING

Out of necessity, the Agency has "streamlined" significantly during the past 14 years. In addition to reductions in staff and increases in productivity, the Agency has reexamined and reorganized itself for greater efficiency and effectiveness. In particular, in 1988 the Agency redefined the boundaries of 2/3 of its Regional Offices. Because the reorganization achieved a better balance of the case intake among the regions, the managerial resources associated with a regional office were fully and efficiently utilized throughout the field operation. The inefficiencies of having offices which were too large or too small were virtually eliminated. The reorganization also aligned geographic areas with field the offices in closest proximity, thus providing more convenient service to the public while at the same time reducing nonproductive employee travel time.

As discussed above, another example occurred in 1990, when the General Counsel eliminated one of six executive managerial units in headquarters within the Division of Operations Management, which has management responsibility over the field operation. By reassigning management responsibility to the remaining five management teams, there was a reduction in the vertical layering of 16 percent.